
**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
Comprehensive Review of Universal Service)	WC Docket No. 05-195
Fund Management, Administration and)	
Oversight)	
)	
Federal State Joint Board on Universal Service)	CC Docket No. 96-45
)	
Schools and Libraries Universal Service)	CC Docket No. 02-6
Support Mechanism)	
)	
Rural Health Care Support Mechanism)	WC Docket No. 02-60
)	
Lifeline and Link-Up)	WC Docket No. 03-109
)	
Changes to the Board of Directors for the)	CC Docket No. 97-21
National Exchange Carrier Association, Inc.)	
To: The Commission		

**REPLY COMMENTS OF DOBSON CELLULAR SYSTEMS, INC. AND
AMERICAN CELLULAR CORPORATION**

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SUMMARY

In this proceeding, Dobson and other commenters advocate broad-scale reform of the high cost program to promote efficiency and to ensure that the program is achieving the goals set forth by Congress. Dobson and CTIA, for example, argue that the Commission should combine the five separate high cost programs into one unified mechanism and provide support through this mechanism using an objective measure of cost, such as the forward-looking cost of the most efficient technology to serve a given area. Some parties that benefit from the excesses of the current system, particularly RLECs, oppose such efforts and seek to maintain the status quo. The Commission should reject calls to maintain the status quo, which unreasonably benefit only a select group of carriers, and instead seek to implement important reforms to the high cost program.

Additionally, the Commission should implement reform that will make USAC more efficient and accountable. Several carriers support reforms that will require USAC to provide detailed explanations regarding changes to carrier disbursement amounts and billing statements. Additionally, commenters support requiring USAC to make its policies and procedures public and to seek comment on any proposed changes to those policies and procedures. Finally, the Commission should implement the necessary changes that will allow for releasing the contribution factor at least 30 days before the beginning of each quarter. In the process, USAC's procedures for electronic filing should be improved.

Contributor and beneficiary audits are an important way of improving the performance of the funding mechanism. The Commission should reject RLEC attempts to exempt themselves from an auditing requirement. Contrary to RLEC statements, the record reflects that RLECs are not already heavily audited by other agencies. The Commission also should reject a threshold cut-off for imposition of audits. If the Commission were to set such a threshold, it would eliminate any deterrent effects that audits may have on carriers below that threshold. Finally, there is no rational reason to subject competitive ETCs to a more stringent review of their use of universal service funding, particularly if the Commission imposes an auditing requirement on all funding beneficiaries.

Dobson also supports meaningful performance measurements to determine USAC's effectiveness in administering the USF program. The Commission also should implement performance measurements specific to the high cost program to determine whether the current funding scheme benefits consumers and meets the goals of the high cost program. Specifically, Dobson suggests that the Commission should implement a performance measure to ensure that customers in rural areas are getting access to services they demand, in particular high quality digital wireless service.

Dobson supports, at most, a three-year limitation and record retention period. Finally, the Commission should remedy anomalous situations that arise from the rigid application of its red light rules by adopting a 30-day "yellow light" status, wherein support payments are not suspended and the Commission and carrier are given time to ensure that red light status is justified.

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Dobson Cellular Systems, Inc. and American Cellular Corporation (collectively, “Dobson”) present the following reply comments in response to the Commission’s Notice of Proposed Rulemaking in the above-captioned proceeding.¹ Like Dobson, many commenters argued that reform is necessary to improve the administration of the high cost universal service

¹ *Comprehensive Review of Universal Service Fund Management, Administration, and Oversight; Federal State Joint Board on Universal Service; Schools and Libraries Universal Service Support Mechanism; Rural Health Care Support Mechanism; Lifeline and Link-Up; Changes to the Board of Directors for the National Exchange Carrier Association, Inc.*, WC Docket No. 05-195, CC Docket No. 96-45, CC Docket No. 02-6, WC Docket No. 02-60, WC Docket No. 03-109, and CC Docket No. 97-21, *Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking*, 20 FCC Rcd 11308 (2005) (“NPRM”).

support mechanisms, as well as to improve the overall efficiency of USAC, its policies and procedures. Dobson takes this opportunity to set forth the broad support in the comments on some of these issues, as well as to respond to other parties' positions.

I. THE COMMISSION SHOULD REJECT ARGUMENTS THAT THE EXISTING HIGH COST MECHANISM IS APPROPRIATE AND INSTEAD ADOPT A SINGLE, UNIFIED HIGH COST MECHANISM

Many parties recognize the need for broad-scale reform of the high cost support program in order to promote efficiency and to ensure that the high cost program is achieving the goals set forth by Congress and the FCC.² Specifically, Dobson and other commenters support competitively neutral changes to the universal service fund that will improve its efficiency, thereby reducing the overall size of the fund and alleviating the strain that such a large fund places on customers and carriers. Although some parties argue that broader changes are not needed,³ such comments generally come from parties, such as RLECs, that stand to benefit the

² CTIA – The Wireless Association™ (“CTIA”) Comments at 9-10; Dobson Cellular Systems, Inc. and American Cellular Corporation (“Dobson”) Comments at 9-10. Although not proposing the same reforms at CTIA and Dobson, other carriers acknowledge that problems exist in the high cost program, requiring the Commission to take action. *See, e.g.*, Qwest Communications International Inc. (“Qwest”) Comments at 5 (“[U]niversal service funding has failed to make a more meaningful transition to the competitive industry structure envisioned in the Telecommunications Act of 1996. High-Cost support amounts are determined based on costs for last century’s copper-based wireline networks (whether embedded or modeled). ... Until policymakers decide what networks to support and how, universal service programs will continue to be an anachronistic monopoly-driven square peg trying to fit into the round hole of today’s competitive marketplace.”); General Communications, Inc. (“GCI”) Comments at 6 (“With the high cost universal service program, the need for performance measures is especially acute. One of the most pressing issues facing the Commission today is defining which technologies and carriers are eligible to receive universal service support. Only by first defining what constitutes a successful program can the Commission develop policies that encourage innovation and entry by the most cost-efficient technologies and providers, and at the same time reduce overall demand on the fund.”).

³ Alexicon Telecommunications Consulting (“Alexicon”) Comments at 12 (“[T]he existing processes related to High Cost program mechanisms generally are working well, and do not (continued on next page)

most from it. In releasing this NPRM and commencing other proceedings, the Commission has acknowledged the need for fundamental universal service reform, and should pursue that course.

A number of important reforms have been proposed in this proceeding. CTIA and Dobson argue that the high cost support mechanism can be administered much more efficiently if the five existing programs are consolidated into a single program and all support is provided based on an objective measure of costs, such as the forward-looking cost of the most efficient technology to serve a given area.⁴ As CTIA has stated, “[c]arriers, consumers, and the administrator will benefit from a unified system that will significantly reduce unnecessary costs and burdens associated with managing multiple mechanisms.”⁵ The five separate programs, which all seek to provide support for services or networks where needed, are inefficient and unnecessarily complex.⁶

Moreover, as Dobson has argued in the Commission’s proceeding on high cost reform, maximum efficiency can be achieved if the unified mechanism is based on the forward-looking

create undue administrative burdens on carriers”); Fred Williamson & Associates (“FW&A”) Comments at 1 (stating that the current application and filing requirements for the high cost program should remain the same); Organization for the Promotion and Advancement of Small Telecommunications Companies and the Western Telecommunications Alliance (“OPASTCO and WTA”) Comments 11, 13 (stating that existing high cost reporting requirements for RLECs should remain the same, that the FCC should not consolidate the rules governing the high cost program and that the disbursement process for the various high cost support mechanisms should not be combined); GVNW Consulting, Inc. (“GVNW”) Comments at 15 (noting that it does not support a single uniform disbursement process for the high cost program).

⁴ Dobson Comments at 9-10; CTIA Comments at 9-10.

⁵ CTIA Comments at 9-10 (citing Comments of CTIA – The Wireless Association™ on Joint Board High Cost Proposals, CC Docket No. 96-45, at 19 (filed Sept. 30, 2005)).

⁶ Dobson Comments at 9-10.

cost of the most efficient technology.⁷ On an administrative level, funding based on forward-looking costs will eliminate administrative costs incurred by carriers and USAC to track, report, and audit embedded costs that are currently used to calculate funding amounts for rural telephone companies. Just as important, a forward-looking mechanism will resolve the debate about providing support to competitive ETCs based on incumbents' costs, and will ensure that universal service funding goes to support the *efficient* costs of services and networks, not to pad the pockets of certain carriers.

In addition to the financial security that comes from universal service funding to cover any investments that cannot be recovered from customer revenues, RLECs already enjoy an outlandishly high rate of return on their investments (11.25% in the interstate jurisdiction). In addition, rate-of-return regulation provides no incentives for carriers to act efficiently. The Mercatus Center at George Mason University describes the reasons for the “substantial inefficiencies” of rate-of-return regulation:

Rate-of-return regulation often distorts the regulated firm's choice of inputs, so the regulated firm fails to produce at minimum costs. Rate-of-return regulation also reduces entrepreneurial incentives to squeeze out unnecessary costs and undertake valuable but risky innovation. The resulting rates might be considered ‘just and reasonable,’ because they reflect costs, but the costs themselves are inflated. In such an environment, some subsidies merely cover artificially inflated costs, rather than lowering prices for consumers.⁸

⁷ Dobson Comments on Joint Board Proposals for High-Cost Universal Service Reform, CC Docket No. 96-45, at 4, 7 (filed Sept. 30, 2005) (“Dobson High Cost Reform Comments”); Dobson Comments at 10.

⁸ Mercatus Center, George Mason University, Regulatory Studies Program (“Mercatus Center”) Comments at 13-14 (citations omitted).

The Commission as far back as 1997 recognized the need to provide support to rural carriers, too, based on a forward-looking mechanism.⁹ In the *First Universal Service Report and Order*, the Commission stated its intention to use a forward-looking cost model to determine rural carriers' support, finding that such a mechanism would promote competition and send the appropriate investment signals in rural areas.¹⁰ Moreover, the Commission has found that the forward-looking mechanism is the best way to set prices in the competitive market that exists in the communications industry.¹¹ As Dobson previously acknowledged, the development of a unified forward-looking cost model may take time.¹² The Commission can, however, separate wireless and wireline models for rural areas on a short-term, interim basis to provide RLECs additional time to transition to a single unified mechanism based on the forward-looking cost of the most efficient technology.¹³

⁹ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Report and Order*, 12 FCC Rcd 8776, 8935 (1997) ("*First Universal Service Report and Order*"). The Commission found that the forward-looking model would "be able to predict rural carriers' forward-looking economic cost with sufficient accuracy that carriers serving rural areas could continue to make infrastructure improvements and charge affordable rates." *Id.* at 8935.

¹⁰ *Id.* at 8936.

¹¹ *Review of the Commission's Rules Regarding the Pricing of Unbundled Network Elements and the Resale of Services by Incumbent Local Exchange Carriers*, WC Docket No. 03-173, *Notice of Proposed Rulemaking*, 18 FCC Rcd 18945, 18957-58 (2003)).

¹² Some of the broader high cost reforms discussed herein may most logically take place in other proceedings. See, e.g., *Federal-State Joint Board on Universal Service Seeks Comment on Proposals to Modify the Commission's Rules Relating to High-Cost Universal Service Support*, CC Docket No. 96-45, *Public Notice*, 20 FCC Rcd 14267 (2005); *Federal-State Joint Board on Universal Service, High-Cost Universal Service Support*, CC Docket No. 96-45, WC Docket No. 05-337, *Notice of Proposed Rulemaking*, FCC 05-205 (rel. Dec. 9, 2005). These proceedings, coupled with the current USF Administration proceeding, all speak to the Commission's recognition of the broader need to reform USF, and, specifically, the high cost program.

¹³ Dobson High Cost Reform Comments at 2-8. CTIA also suggests that on an interim basis, larger "rural telephone companies" could be transitioned to the forward-looking high cost support mechanism if smaller rural carriers needed more time to make such a transition.

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II. SEVERAL COMMENTERS RECOGNIZED THE NEED TO MAKE USAC MORE ACCOUNTABLE

A. The Commission Should Require USAC to Provide Detailed Explanations Regarding Changes to Disbursement Amounts or Billing Statements

Several commenters note the dearth of information provided in USAC disbursement and billing statements.¹⁴ As several carriers explained, USAC provides only a series of numbers to indicate support amounts. In one particular instance, Centennial notes that its disbursement statement included only a series of negative numbers. Apparently, USAC believed it had improperly made payments to several carriers, including Centennial, and decided to begin collecting those payments but provided no explanation to Centennial other than negative numbers on its statement.¹⁵ Because of this lack of even the most basic of explanations, Centennial was required to use its own resources to determine why USAC believed it had made improper payments to the carrier. Also, Dobson finds more often than not that its disbursement statements contain unexpected and inexplicable adjustments that require extensive follow-up with USAC to clarify. Irrespective of whether USAC's statements are correct, it is troubling that USAC does not provide a full explanation in this type of situation.

To attempt to remedy such problems, Centennial and several other commenters ask that the Commission require USAC to provide specific details about how support is calculated and

Comments of CTIA – The Wireless Association™, CC Docket No. 96-45, at 22-23 (filed Oct. 15, 2004).

¹⁴ Dobson Comments at 6; Centennial Communications Corporation (“Centennial”) Comments at 2-4; CTIA Comments at 6; Qwest Comments at 11, 31; United States Telecom Association (“USTelecom”) Comments at 8; CenturyTel, Inc. (“CenturyTel”) Comments at 7; GCI Comments at 35; National Exchange Carrier Association, Inc. (“NECA”) Comments at 19.

¹⁵ Centennial Comments at 8.

explanations as to why support amounts change from month to month.¹⁶ The detail must be provided at the *study area level* (USAC's disbursements currently are made at the state level).¹⁷ The same detail also should be provided for carriers' contributor billing statements, which Dobson noted almost always include adjustment amounts with no explanations. USAC's statement should provide enough information so that carriers can verify the accuracy of both their payments and their disbursements. Carriers should be able to compare USAC's information to their own data to ensure that no mistakes have been made in either calculation. As Centennial stated, carriers should not be "left to accept on faith what USAC gives them – even though the numbers are frequently wrong – or to invest in resources to check USAC's work and dispute the results," particularly when carriers are not given enough information even to be able to discern how USAC arrived at its numbers.¹⁸

USAC notes that it is working to provide additional notification to recipients regarding their support calculations, particularly when support changes are not otherwise predictable by

¹⁶ See *supra* n.14. Centennial describes a specific format for support statements. The statements would include the following information: ILEC Study Area Code; LEC Name; Zone (some study areas are disaggregated because of disparity of service costs); Number of Residential & Single Line Business Lines; Residential Rate Per Line; Number of Multi-Line Business Lines; Multi-Line Business Rate Per Line; Date of Service Provider's Eligibility; Month X; Month Y; Month Z; and Total. This format shows carriers how their support changes from month to month and why changes in support are occurring. Centennial Comments at 3-4. Dobson, in its comments, asked for similar information, arguing that a disbursement statement should include the carrier's line count submission, the available per-line amount and provide reconciliation for any discrepancy between the amount that would be expected and what is disbursed. Dobson Comments at 6.

¹⁷ Dobson Comments at 6.

¹⁸ Centennial Comments at 9.

ETC recipients.¹⁹ Given the broad support for such a measure, the FCC should require USAC to provide detailed information on both the carriers' support and billing statements.

B. USAC Should Be Required to Make Its Policies and Procedures Public and to Seek Comment on Any Procedures Adopted

Several commenters support requiring USAC to make its policies and procedures publicly available.²⁰ Dobson suggests in its comments that USAC be required to file a manual as an *ex parte*. Other carriers suggest that such policies and procedures be available on USAC's website.²¹ Either of these options would be sufficient, so long as the public has reasonable access to USAC's policies and procedures and updates of any new policies or procedures are provided expeditiously.

Some carriers take this issue one step further, asking that the Commission codify certain USAC policies and procedures. USAC states in its comments that its policies and procedures should not be codified because it needs flexibility to change these policies and procedures.²² Additionally, USAC argues that it has hundreds of procedures that change frequently and must remain confidential to ensure program integrity. Although Dobson agrees that full codification might constrain flexibility needed for the efficient administration of the program, the Commission should reject the notion that any USAC policies should be confidential. Carriers must know what standards they are being measured against. USAC should not be permitted to

¹⁹ USAC Comments at 187.

²⁰ BellSouth Corporation ("BellSouth") Comments at 5; Qwest Comments 13, 26; SBC Communications Inc. ("SBC") Comments at 5-6; Verizon Comments at 19; New Jersey Division of Ratepayer Advocate Comments at 8; NECA Comments at 15-16.

²¹ Qwest Comments at 13, 26 (notes that USAC's practices and procedures should be located in one place on its website, not scattered throughout the website); Verizon Comments at 19.

²² USAC Comments at 82.

change policies as it wishes and keep policies a secret from carriers. The Commission must require that USAC be bound to its published rules, along with any changes. At the same time, USAC should have flexibility – within limits – to change its policies.

Dobson also agrees that any major shifts in USAC policy or procedure should be preceded by notice and public comment. USAC should publish any anticipated changes to policy or procedure and request comment from stakeholders. Input from contributors and funding recipients will help incorporate practical considerations from the carriers' perspective that USAC may not be aware of on its own. Such a process also would provide the Commission an opportunity to review the proposed change and determine, for example, whether a proposed procedure would be over-reaching by implementing substantive policy and not just a procedural rule, or would misinterpret Commission rules or precedent. Other carriers in addition to Dobson support such an approach.²³ This two-step process of (1) soliciting comment on new policies and procedures, and (2) providing clear notice of policies and procedures (without the Commission being required to undertake the process of codification), would provide USAC with the necessary flexibility and the information to make good decisions, while also giving stakeholders a role in the process and the information they need to comply with their obligations.

C. There is Broad Support for Releasing the Contribution Factor in a More Timely Fashion

Dobson argued in its initial comments that FCC should release the contribution factor at least 30 days prior to the beginning of the quarter; to that end, Dobson suggested that USAC should be required to provide the necessary data for calculation of the contribution factor at least

²³ Sprint Nextel Corporation (“Sprint Nextel”) Comments at 4; BellSouth Comments at 5; SBC Comments at 5-6.

45 days prior to the beginning of each quarter.²⁴ Other carriers supported a more timely schedule for release of the contribution factor.²⁵ Receiving the contribution factor 30 days before the end of the quarter will permit Dobson to give its customers 30 days notice before they receive the first bill reflecting the revised contribution factor. Other carriers pointed to similar needs.²⁶

USAC argues that if parties want an earlier release of the contribution factor, the Commission must mandate electronic filing of FCC Form 499-Q and FCC Form 499-A, or the FCC must require contributors to file the FCC Form 499-Q 14 days earlier.²⁷ Dobson cannot present *actual* financial data any earlier than the deadlines imposed by the Securities and Exchange Commission for financial reporting (40 days after the end of quarters; 75 days after the end of fiscal years). Thus, Dobson could only file its Forms 499-Q earlier than these dates if it uses *estimated* financial information. If carriers use estimated financial data in quarterly filings, they could true up the amounts when they file their Forms 499-A.

Dobson has no objection to an electronic filing requirement, but USAC must change its cumbersome electronic filing procedure before it can be mandated. Indeed, Dobson would prefer to file its forms electronically but USAC recently made a change to its signature policy for electronic filings that, in a practical sense, prevents Dobson from filing electronically. Prior to November 1, 2005, Dobson submitted its filings online and the preparer received confirmation

²⁴ Dobson Comments at 8-9.

²⁵ Qwest Comments at 14 (asks for the contribution factor to be released at least 30 days before the beginning of each quarter); Verizon Comments at 26 (asks for the release of the contribution factor 35 to 40 days before the start of each quarter).

²⁶ *See, e.g.*, Qwest Comments at 14; Verizon Comments at 26 (noting that if the contribution factor is released at least one month before the end of the quarter, carriers will have sufficient time to make the necessary changes to their tariffs).

²⁷ USAC Comments at 67.

that the filing had been processed. The preparer would then have an officer sign the submitted filings on paper and send those copies via Federal Express to USAC as the official signature. All of this was complete before the due date.

Since November 1, 2005, in order to file electronically, filers must first have their signing officer approved by USAC. Then, the carrier must submit the filing online and wait for USAC to send the official signing officer an e-mail to inform that officer that he/she can review and certify the filing. After receiving the e-mail, the official signing officer must log into USAC's system and bring up each filing separately,²⁸ review the filing online and certify the filing while online. After this certification is complete, the official signing officer receives another e-mail from USAC stating that the filing has been accepted. USAC would not give Dobson any information regarding how long it would take the official signing officer to receive the first or second e-mail, but the filing is not considered timely until the officer has received the second e-mail. As such, Dobson did not feel it safely could ensure timeliness of the filing, and therefore has chosen to file on paper.²⁹

The new electronic filing process for Form 499 should be improved in several ways. One way to improve the process would be simply to revert to the old system used prior to November 1, 2005. Although the former process was somewhat flawed in that it required the preparer to

²⁸ Each separate filing has its own sign-on password.

²⁹ Additionally, this new process provides other road blocks. For example, if the official signing officer could not submit the filings and Dobson must have another officer sign them, those filings must be done via paper since the other officer is not an official signing officer. However, once the other officer makes the filings via paper, he or she becomes the e-mail contact for the next filing, and therefore, the official signing officer. If Dobson wishes to return to using the first officer, it must do another paper filing to make that officer the official signing officer again. To remedy this problem, USAC should have an online process for companies to change the identity of the official signing officer.

have an officer sign and submit the filings after confirmation of the online filing had been received, this process at least allowed the initial filing to be made electronically, involved only two steps (as compared to the new process, which utilizes a four-step process) and was fairly straightforward. Another approach would be to retain a form of the current procedure, but require USAC to provide assurances to filers regarding how long it will take for both e-mails to be received by the official signing officer (such as within 48 hours after submission). Finally, USAC could accept receipt of the form with an electronic signature, which, in accordance with federal law, provides the same level of assurance as a written signature.³⁰

III. THE COMMISSION SHOULD REJECT RLEC ATTEMPTS TO EXEMPT THEMSELVES FROM AN AUDIT REQUIREMENT

Dobson and other commenters support an audit requirement for all recipients of and contributors to universal service support as a means of increasing discipline in the funding mechanism.³¹ The largest recipients of high cost support, the RLECs, attempt in a number of ways to exempt themselves from this requirement, but their arguments are without merit.³² The

³⁰ *Electronic Signatures in Global and National Commerce*, S. 761, 106th Cong., 2d Sess. (signed into law June 30, 2001, taking effect on October 1, 2000) (contracts or business transactions cannot be denied validity or enforceability solely because the contract or transaction was not in writing; it is sufficient that the contract or transaction is affirmed by electronic signature). Other commenters support use of an electronic signature. NECA, for example, argues that the numerous FCC data forms and certifications could be combined and participating carriers could certify data using electronic signatures. NECA Comments at 17.

³¹ Dobson Comments at 14 (arguing for competitively neutral audits); CTIA Comments at 16 (stating that there must be objective criteria for determining which contributors and recipients are chosen for targeted audits); Qwest Comments at 35 (noting that independent beneficiary and contributor audits are appropriate provided that they are narrowly tailored to avoid imposing undue administrative costs and burdens).

³² Their arguments include that: (1) RLECs already are audited in other programs; (2) since RLEC support is based on costs already incurred, there is a greater assurance that RLECs are using support for its intended purposes; and (3) that the Commission should apply threshold cut-offs in order to exempt smaller carriers from the burdens of audits.

Commission could not exclude some of the largest recipients of support from audit scrutiny without abrogating its responsibility as steward of the fund; to do so also would violate basic principles of competitive neutrality.

The RLECs first attempt to be released from an auditing requirement by arguing that they already are audited through other agencies and programs, such as the Rural Utilities Service (“RUS”), NECA and the state commissions.³³ First, it is not clear if this is true. The Public Utilities Commission of Oregon has stated in comments in the high cost support proceeding that it “has never approved the investments of rural telephone cooperatives and has not approved the investments of any rural telephone company for two decades. Rural telephone companies are largely free from economic regulation in Oregon.”³⁴ The same is true in “many other states.”³⁵ The Oregon PUC points out that there is deregulatory legislation being enacted in several states, making oversight of rural ILECs less and less common. “The assumption that rural telephone companies’ investments have been approved by State commissions is simply not justified.”³⁶ If

³³ OPASTCO and WTA Comments at 4 (noting that RLECs often are already independently audited through the RUS program and through state commissions); National Telecommunications Cooperative Association (“NTCA”) Comments at 6 (stating that audit plans should be targeted to high-risk areas and should recognize the extent to which RLECs already are audited by independent external auditors, NECA and other agencies); GVNW Comments at 16 (noting that the FCC should recognize that RLECs already are reviewed and audited by independent external audits, various other agencies and NECA); NECA Comments at 28 (FCC should take into account the extensive audit and review requirements imposed on ILECs by other agencies already, including by internal and external company auditors, state regulators, the RUS and NECA).

³⁴ Reply Comments of the Public Utility Commission of Oregon, CC Docket No. 96-45, at 4 (filed Oct. 31, 2005) (“Oregon PUC Reply Comments”).

³⁵ Comments of the Public Utility Commission of Oregon, CC Docket No. 96-45, at 8 (filed Sept. 30, 2005) (“Oregon PUC Comments”).

³⁶ Oregon PUC Reply Comments at 4; Oregon PUC Comments at 8 (“In Oregon and many other states, small incumbent rural ETCs’ consumer rates are not regulated.”).

RLECs are not being audited at the state level, the need for RLEC audits at the federal level is even more acute.

Moreover, to the extent that RLECs are in fact more extensively audited than other carriers, such auditing programs cannot exempt the RLECs from random or for-cause audits imposed by the Commission to ensure that universal service support is being used for its intended purposes. RLECs are subject to different standards and rules when being audited by separate organizations, such as the RUS. The RUS is not concerned with whether a carrier is using its universal service support in accordance with Sections 214 and 254 of the Communications Act. Additionally, audits performed by NECA or state commissions may be more focused on certain aspects of a carrier's receipt of support, but do not look at the broader issue of the intended purposes of a carrier's USF expenditures.³⁷ Regardless of what other auditing requirements some carriers may face as result of receiving other sources of funding (from the RUS, for example), the proposed audits only will benefit the universal service program in a global manner if *all carriers* are subject to competitively neutral audits. Without the threat of an audit conducted specifically to determine a carrier's compliance with Commission requirements to use funds for their intended purposes, a carrier will have fewer incentives to ensure that support is being used only for such purposes.

The second assertion RLECs use to argue they should be exempt from for-cause and targeted auditing is that, since RLEC support is based on costs already incurred, there is a greater

³⁷ The Commission could choose to designate USAC to conduct random and for-cause audits for the specific purpose of determining whether carriers are using support for its intended purposes.

assurance that RLECs are using support for its intended purposes.³⁸ As noted above, however, many states do not regulate RLECs to determine if their expenditures are justified. Without state intervention in such matters, there is no guarantee that costs being recovered under an embedded cost mechanism are being prudently incurred by carriers. Furthermore, as also noted above, the Mercatus Center argues that even when the rates of RLECs may be considered “just and reasonable” since they are based on costs, the costs themselves may already be inflated since rate-of-return regulation distorts the firm’s incentives.³⁹ Rate-of-return regulation provides no incentives for carriers to minimize costs. As such, just because the money is already spent does not mean it was spent in accordance with the Communications Act.

In fact, the Public Service Commission of Missouri (“Missouri PSC”) provides an example of why it cannot be assumed that RLEC funds are being spent appropriately. Describing a loan application filed by Alma Communications Company with the RUS for \$5,579,000 in support to upgrade its network and purchase a new switch, Alma told the RUS that it would repay this loan “solely” with increased funding it was going to receive in federal USF support.⁴⁰ Specifically, Alma stated that its conversion to a NECA average schedule company, a new switch and fiber investment were expected “to increase Alma’s Federal USF Support

³⁸ OPASTCO and WTA Comments at 4-5 (“[U]nlike competitive eligible telecommunications carriers (CETCs) in rural service areas, the support received by rural ILECs is based almost entirely on their own past actual investment and expense payments. In other words, the high-cost support rural ILECs receive is cost recovery for network investment that has already been made. This provides a very high level of assurance that the high-cost support rural ILECs receive is used for appropriate purposes.”).

³⁹ Mercatus Center Comments at 13-14.

⁴⁰ Public Service Commission of the State of Missouri Comments at 8-9.

payment by more than \$600,000 per year by 2007.”⁴¹ Although the RUS and the Missouri PSC approved Alma’s financing plan, a dissenting Commissioner noted that the increased “disbursements from the USF will be more than adequate to cover the annual debt service payments, leaving Alma with a tidy profit of \$300,000 to \$350,000 annually, over and above other profits the company already realizes.”⁴² It is hardly arguable that USF is being used for its intended purposes if a carrier is receiving increased universal service support and is using such funding to pay off a loan the carrier received from a different federal government program, permitting it to earn excessive profits at the expense of other carriers’ ratepayers. Moreover, the Commission should consider whether it is appropriate for a carrier to realize additional profits at the expense of the universal service program.

While arguing that RLECs arguments should not be subject any kind of auditing requirement, NTCA also tries to argue that the FCC should impose a more stringent review of CETC use of universal service funding.⁴³ Specifically, NTCA argues that CETCs must connect the funding they receive with their intended expenditures outlined in their five build-out plan filed with the FCC. “Any use of universal service funds for purposes not directly related to the accomplishment of goals outlined in their buildout plan should be closely scrutinized.”⁴⁴ While Dobson fully supports *all* ETCs’ obligations to use support appropriately, NTCA appears to forget that ETCs are statutorily permitted to use universal funds for more than just upgrading and building out their networks. Section 254 permits the use of universal service funding for the

⁴¹ *Id.* at 9 (quoting Alma application).

⁴² *Id.*

⁴³ NTCA Comments at 7.

⁴⁴ *Id.*

“provision, maintenance, and upgrading of facilities.”⁴⁵ NTCA’s notion that any funds not spent on “improvements or upgrades” should be closely scrutinized appears to assume that support used for the “provision” or “maintenance” of facilities is not appropriate, even if consistent with the statute. Since no party has the power to ask that the Commission delete two of the three uses of support permitted under section 254(e), the Commission must reject NTCA’s proposals. Moreover, so long as the Commission imposes a competitively neutral, random and for-cause auditing requirement on all carriers, no additional scrutiny is needed for CETCs, since they will be subject to audit.

Finally, RLECs also try to exempt themselves from any auditing regime by arguing in favor of a threshold cut-off for imposition of audits, such that carriers that receive less than a certain amount of funding would not be audited.⁴⁶ Like Dobson, several other commenters, including ILECs, CLECs, a representative of the RLECs and USAC, also note their opposition to such a proposal.⁴⁷ In its comments, Dobson notes that “[b]y setting a threshold for audits, the Commission would eliminate any deterrent effect at levels below the threshold.”⁴⁸ Similarly, Sprint Nextel states:

[T]here is no record evidence to suggest that ‘large’ (however defined) beneficiaries of any of these programs are more prone to waste, fraud and abuse than are smaller beneficiaries ... To the contrary, it seems likely that the largest beneficiaries already have

⁴⁵ 47 U.S.C. § 254(e) (emphasis added).

⁴⁶ See, e.g., OPASTCO and WTA Comments at 5-7, 10 (for beneficiaries, recommends a threshold cutoff for audits be 0.1 percent of the total size of the high cost program applied at the study area level; for contributors, recommends a threshold contribution level of 0.15 percent of the projected contribution base).

⁴⁷ Dobson Comments at 17-18; BellSouth Comments 21; Qwest Comments at 37; Alexicon Comments at 16; GCI Comments at 33; Nextel Comments at 15; USAC Comments at 216.

⁴⁸ Dobson Comments at 17.

in place comprehensive and sophisticated financial controls; have significant administrative resources (for example, legal and regulatory review) available to help ensure compliance with program rules; and are already subject to careful scrutiny by their current independent auditors and by external financial analysts. Furthermore, because many of the largest program participants have a great deal at stake before the Commission outside the universal service programs, such entities have a vested interest in maximizing their USF compliance. ... Certainly, the Commission would not want to unwittingly discourage small beneficiaries from enforcing strict internal controls because the likelihood that they will be subject to audits (either routine or random) is minimal.⁴⁹

The universal service program would be best served by an auditing program where all carriers have the possibility of being scrutinized under either random or for-cause audits. The Commission should reject the RLEC attempts to exempt themselves from an auditing requirement.

IV. DOBSON SUPPORTS MEANINGFUL PERFORMANCE MEASUREMENTS TO DETERMINE THE EFFECTIVENESS OF USAC AND THE HIGH COST PROGRAM

The universal service program will benefit from the establishment of performance measurements that assess how effectively USAC is administering the various universal service support programs. Such performance metrics would determine whether the goals of the high cost program are being met under the Commission's current funding regime.

Commenters support performance measurements for USAC.⁵⁰ BellSouth argues that such performance measurements would permit the FCC to assess USAC's performance through objective criteria, while also providing USAC with an incentive to operate more effectively and

⁴⁹ Sprint Nextel Comments at 15-16.

⁵⁰ BellSouth Comments at 12; Qwest Comments at 15. Other carriers more generally supported some form of review process for USAC. Alexicon Comments at 5; FW&A Comments at 1-2; OPASTCO and WTA Comments at 15; NECA Comments at 22-23.

efficiently.⁵¹ Qwest supports publishing the results of USAC's performance in meeting these metrics.⁵²

USAC itself recommended certain performance measurements that could be used to determine if the universal program is being run efficiently. For example, USAC expresses its support for administration performance measurements discussed by the Commission, including: the number of applications for USF support processed within a particular time period; the percentage of applications rejected by USAC for errors or other reasons; the average number of days required to process an application; the accuracy of bills issued to contributors; and the number of errors made in disbursing funds to USF beneficiaries.⁵³ More specific to the high cost program, USAC proposes administrative output measurements for this program, including: time to process support payments and authorize disbursements; time cycles for processing line count data and certifications; number of stakeholders served, including incumbent carriers, competitive carriers and state commissions; and number of lines processed per carrier.⁵⁴ USAC suggests it could measure the administrative costs and resources expended for each data point of the high cost program processed by USAC, thereby providing the FCC with information about the costs incurred as a result of the requirements it imposes. USAC states that as part of its enterprise-wide information technology effort, it already intends to develop systems that will be capable of collecting data needed to perform such measures. Additionally, to assess the impact of other programs supporting ETCs, USAC states that it could work with state and federal agencies to

⁵¹ BellSouth Comments at 12.

⁵² Qwest Comments at 15.

⁵³ USAC Comments at 99-100.

⁵⁴ *Id.* at 93-94.

determine the impact of these different programs, including state and RUS support.⁵⁵ Dobson supports USAC's suggested performance measurements, but suggests that the FCC seek further comment from carriers on other performance measurements that might be useful in determining USAC's efficiency and effectiveness at administering the USF programs.

The Commission also should take this opportunity to consider implementing performance measurements to determine if high cost funding is being spent in such a way as to promote program goals. The Mercatus Center states that "[m]eaningful outcome measures identify the extent to which the program has actually caused improvements."⁵⁶ Both GCI and Qwest in their comments note that the need for performance measurements is particularly acute in the high cost program.⁵⁷ Both also argue that the Commission needs to define what constitutes a successful high cost program so that the Commission can develop policies and encourage innovation.⁵⁸ Dobson supports such performance measurements, particularly as an opportunity for the Commission to determine whether customers in rural and high cost areas have access to the services they need and want at comparable prices.⁵⁹ As CTIA notes in its comments, in just the

⁵⁵ *Id.*

⁵⁶ Mercatus Center Comments at 6.

⁵⁷ GCI Comments at 6; Qwest Comments at 19-20.

⁵⁸ GCI Comments at 6; Qwest Comments at 19-20 ("The present High-Cost system provides enormous amounts of support to carriers without any clear criteria for determining if the funding is serving the statute's and the Commission's goals. Indeed, what little evidence exists suggests the most obvious of these goals are not being fulfilled: despite the enormous size of the High-Cost fund, subscribership recently has begun to fall, after years of stagnancy. ... In particular, the Commission must ensure that it has adequately defined the statutory terms (including 'sufficiency' and 'reasonable comparability') so that appropriate performance measures can be formulated.").

⁵⁹ In its comments, Dobson supported other performance measures. Specifically, Dobson recommends that the Commission adopt a performance metric for the high cost program that measures the Commission's and carriers' progress toward the goal of determining costs through
(continued on next page)

last year, the number of wireless subscribers increased from 160.2 million to 184.7 million. As a result, there are now more wireless subscribers than wireline switched access lines.⁶⁰ Customers everywhere are demanding high quality digital wireless service for reasonable prices. Customers in rural and high cost areas should have access to wireless service that is comparable to what is available in urban areas. In fact, many customers would consider ubiquitous access to wireless service in such areas a necessity. As such, the Commission should find that what constitutes a successful high cost program is a program that supports the provisioning of high quality wireless services in rural and high costs areas. After defining this goal, Dobson argues that the Commission must implement performance metrics that measure whether the high cost program is providing such access to customers in rural and high cost areas. For example, the Commission could measure how universal service funding to wireless carriers increases the availability to customers and business in high cost areas of digital wireless service that is comparable in quality and price to wireless service offered in urban areas.

V. THE COMMISSION SHOULD NOT ADOPT A FIVE-YEAR LIMITATION AND RECORD RETENTION PERIOD FOR THE HIGH COST FUND

Dobson and other commenters oppose proposals to impose the 5-year limitations and document retention period used for the schools and libraries program on high cost program

an objective measure, such as forward-looking costs. Dobson also recommends that the Commission set a goal that consumers in rural and high cost areas have access to service from no fewer than 3 total ETCs. A metric should be developed to measure progress toward meeting this goal. Finally, Dobson suggests a metric to determine how much support carriers are receiving from other programs, such as the RUS. Dobson Comments at 11-14.

⁶⁰ CTIA Comments at 2.

recipients and contributors.⁶¹ No commenters set forth any rational basis as to why the 5-year record retention and limitations period applicable in the schools and libraries program should be used for the high cost fund. USAC argues that a 5-year document retention period is needed for the high cost program because USAC makes payments based on historical data.⁶² For example, USAC notes that there is a gap of over one year between the date upon which the cost per loop information is based and the disbursement of high cost loop support from USAC.⁶³ This one year lag time does not, however, justify retaining documents for five years. Moreover, if the Commission converts to a single unified high cost mechanism based on forward-looking costs, historical data will no longer be used to calculate support, justifying a short retention period.

As Dobson argued in its comments, the Commission and USAC do not need more than one year to review the quarterly and annual filings of carriers to flag any problems that might indicate a violation of Commission rules or precedent.⁶⁴ As such, Dobson advocates a two year document retention and limitations period. However, consistent with other comments, Dobson would support, at most, a 3-year document retention and limitations requirement, which is consistent with the Commission's current rules.⁶⁵

⁶¹ Dobson Comments at 18-19; BellSouth Comments at 22; USTelecom Comments at 5; GVNW Consulting Comments at 18; Verizon Comments at 30.

⁶² USAC Comments at 229.

⁶³ *Id.*

⁶⁴ Dobson Comments at 19.

⁶⁵ *See, e.g.*, 47 C.F.R. § 54.711(a) (providing for a three-year document retention period for records and information needed to corroborate information reported on FCC Form 499-A and FCC Form 499-Q).

VI. THE COMMISSION MUST FIX INAPPROPRIATE APPLICATION OF THE RED LIGHT RULE

The Commission must take action to ensure that its red light rules are not delaying crucial universal service support as a result of ministerial errors made by carriers, USAC or the FCC. According to commenters, rigid application of the red light rules has led to anomalous situations where the FCC places carriers in red light status because of an FCC or USAC error but not because of any delinquency on the part of the carrier.⁶⁶ For example, CenturyTel notes that the Commission erroneously red lighted it 18 times in the last year. The Commission has only appropriately red lighted CenturyTel once because it was in fact delinquent in a payment to the Commission.⁶⁷

Because of these anomalies, commenters support a 30-day “yellow light” status, wherein support payments are not suspended and the Commission and carrier are given time to ensure that red light status is justified.⁶⁸ As soon as the Commission verifies that the carrier is delinquent, the carrier should be placed in red light status immediately.⁶⁹ Dobson supports this approach.

⁶⁶ CenturyTel Comments at 3-6; NECA Comments at 21-22; Qwest Comments at 11.

⁶⁷ CenturyTel Comments at 4.

⁶⁸ *Id.* at 3-6; NECA Comments at 21-22; USTelecom Comments at 7-8.

⁶⁹ CenturyTel argues that carriers should not be red lighted unless the delinquent amount exceeds a materiality threshold, such as \$1000. CenturyTel Comments at 5-6.

CONCLUSION

Dobson urges the Commission to make the reforms to the administration of the high cost universal service program consistent with these reply comments.

Respectfully submitted,

**DOBSON CELLULAR SYSTEMS, INC. AND
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